REMARKS

The present application was filed on July 15, 2003, with claims 1-19. Claims 20 and 21 were added in a previous amendment. Claims 1-21 are currently pending. Claims 1 and 18-21 are the independent claims.

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter.

Claims 20 and 21 are rejected under 35 U.S.C. §101 as being directed to non-statutory subject matter.

Claims 1-10 and 14-19 are rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Patent Application Publication No. 2003/0012141 (hereinafter "Gerrevink").

Claim 11 is rejected under 35 U.S.C. §103(a) as being unpatentable over Gerrevink.

Claims 12 and 13 are indicated as containing allowable subject matter.

With respect to the objection to the specification, Applicants initially note that 37 CFR 1.75(d)(1) requires, with emphasis added, that "the terms and phrases used in the claims must find clear support or antecedent basis in the description so that the meaning of the terms in the claims may be ascertainable by reference to the description." See also MPEP 2173.05(e) ("There is no requirement that the words in the claim must match those used in the specification disclosure.") Applicants respectfully submit that clear support for the data structures recited in claims 20 and 21 is provided by the traffic files described in the specification at page 11, line 15, to page 12, line 16, with reference to FIGS. 3A to 3C. One skilled in the art would recognize such traffic files as being examples of data structures.

With regard to the §101 rejection of claims 20 and 21, Applicants note that claims 20 and 21 each recite an article of manufacture comprising a computer-readable storage medium encoded with one or more data structures comprising information characterizing one or more traffic flows associated with at least one traffic generator, represented as a string which includes a global header followed by one or more frames each having an associated frame header.

The Examiner argues that claims 20 and 21 are non-statutory because "one or more data structures is nonfunctional descriptive material because the one or more data structures are mere arrangement of data." Applicants respectfully disagree.

The portion of MPEP 2106.01 cited by the Examiner states (with emphasis added) that whereas a "mere arrangement of data" is nonfunctional descriptive material, a "data structure. . . . which impart[s] functionality when employed as a computer component" is functional descriptive material. MPEP 2106.01 further specifies "a physical or logical relationship among data elements, designed to support specific data manipulation functions," is a data structure and thus functional descriptive material.

Applicants respectfully submit that the data structures recited in claims 20 and 21, which comprise information characterizing one or more traffic flows associated with at least one traffic generator, represented as a string which includes a global header followed by one or more frames each having an associated frame header, define a "physical or logical relationship among data elements, designed to support specific data manipulation functions."

As described in the present specification at page 6, lines 8-11, illustrative embodiments of the claimed data structures "provide a particularly efficient mechanism for specifying a wide variety of different types of traffic, without undue limitation as to number of protocols, size or arrival time distribution models, parameter sequences, or other features." As such, the data structures recited in claims 20 and 21 "impart functionality when employed as a computer component," and are hence functional descriptive material.

Applicants note that MPEP 2106.01 specifically indicates that "a claimed computer-readable medium encoded with a data structure defines structural and functional interrelationships between the data structure and the computer software and hardware components [of the computer which reads the medium] which permit the data structure's functionality to be realized, and is thus statutory."

Accordingly, claims 20 and 21 recite statutory subject matter, namely, a computer-readable medium encoded with functional descriptive matter comprising one or more data structures which provide such tangible benefits as increased efficiency.

Applicants further note that there are no prior art rejections of claims 20 and 21. Moreover, Applicants respectfully submit that claims 20 and 21 include limitations similar to those recited in allowable claims 12 and 13, respectively. As such, claims 20 and 21 are also believed to be allowable over the prior art.

With regard to the §102(e) rejection of claim 1, Applicants initially note that a given claim is anticipated "only if each and every element as set forth in the claim is found, either expressly or

inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). Moreover, the cited reference must show the "identical invention . . . in as complete detail as is contained in the . . . claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). See generally MPEP 2131.

Independent claim 1 includes a limitation wherein at least one of a plurality of output interfaces of the traffic generator has two or more of the traffic flows associated therewith. An illustrative embodiment is shown in FIG. 2, in which each of output interfaces 202-1, 202-2 and 202-3 have one or more traffic flows associated therewith and output interface 202-1 has three traffic flows associated therewith.

The Examiner argues that these limitations are met by paragraphs [0031], [0052] and [0077] of Gerrevink, which the Examiner characterizes as teaching that "a set of addresses is programmed to be routed to that output port, meaning that a plurality of traffic streams are associated with each output port."

Applicants respectfully submit that the output ports described in the relied-upon portions of Gerrevink are not output interfaces of a traffic generator, as recited in claim 1, but rather output ports of a device under test. See, e.g., Gerrevink at [0031] ("multiple output ports of the [System Under Test] SUT") and at [0052] ("each output port of the equipment under test").

The Examiner argues that "the SUT is a component in the Test System 100, and the Test System is interpreted as the traffic generator." Applicants respectfully submit that the SUT is a separate component which is connected to a traffic generator, rather than being a component of the traffic generator itself.

See Gerrevink at paragraphs [0036] and [0037] (with reference numerals omitted):

> The departure scheduler drives a traffic generator, which produces the resultant output data stream for transmission to the equipment under test.
>
> The traffic generator produces data packets for each of the output data streams and releases the generated packets into these streams at a time designated by the departure scheduler. An equipment specific interface may optionally be provided to interconnect the traffic generator to the equipment under test or the data communication medium. The equipment specific interface functions to provide the physical interconnection as well as the protocol conversion necessary to enable the traffic generator output to be presented to the equipment under test.

Moreover, even if the output ports of Gerrevink could be characterized as output interfaces of the traffic generator, Applicants respectfully submit that Gerrevink's alleged teachings that a set of addresses may be programmed to be routed to a given output port do not mean that a plurality of traffic streams are associated with at least one output interface, as recited in claim 1, much less that a plurality of traffic streams are associated with each output port, as alleged by the Examiner.

Applicants respectfully submit that Gerrevink explicitly defines a "traffic stream" in paragraph [0016] thereof: "Within this context, a traffic stream consists of a set of packets transmitted by one port that have a set of destination addresses corresponding to the set of networks (or routes) reachable at a particular output port." (emphasis added) As such, Gerrevink's alleged teachings that a set of addresses may be programmed to be routed to a given output port instead indicate that that port is associated with one traffic stream. This single traffic stream comprises a set of packets transmitted by that port that have a set of destination addresses associated therewith.

Accordingly, Gerrevink fails to disclose at least the limitation of claim 1 wherein at least one of a plurality of output interfaces of the traffic generator has two or more of the traffic flows associated therewith.

Independent claims 18 and 19 include limitations similar to those of independent claim 1 and are thus believed to be patentable for at least the reasons identified above with regard to claim 1.

Dependent claims 2-17 are believed to be patentable for at least the reasons identified above with regard to claim 1. Additionally, these claims define separately patentable subject matter.

For example, dependent claim 11 includes a limitation wherein a traffic file is represented as a string which includes a global header followed by one or more frames each having an associated frame header. In rejecting dependent claim 11, the Examiner concedes that Gerrevink fails to disclose this limitation of claim 1.

The Examiner asserts that "it is well known in the art that the global header is followed by frames wherein each frame has a frame header. Thus, it would have been obvious to the person of ordinary skill in the art at the time of the invention to implement a global header followed by one or frames each having an associated frame header."

Applicants respectfully submit that it is never appropriate to rely solely on official notice regarding "common knowledge" in the art, without evidentiary support in the record, as the principal

evidence upon which a rejection was based. Specifically, the Federal Circuit has held that an assessment of basic knowledge and common sense that is not based on any evidence in the record lacks "substantial evidence" support and may not form the basis for a rejection. *In re Zurko*, 258 F.3d 1379, 1385, 59 USPQ2d 1693, 1697 (Fed. Cir. 2001).

The Examiner must provide specific factual findings predicated on sound technical and scientific reasoning to support his or her conclusion of common knowledge. See, e.g., *In re Soli*, 317 F.2d 941, 946, 137 USPQ 797, 801 (CCPA 1963); *In re Chevenard*, 139 F.2d 711, 713, 60 USPQ 239, 241 (CCPA 1943). Moreover, specific knowledge of the prior art must always be supported by citation to some reference work recognized as standard in the pertinent art. *In re Ahlert*, 424 F.2d 1088, 1091, 165 USPQ 418, 420-21 (CCPA 1970).

Accordingly, Applicants respectfully request that, for each invocation of official notice, the Examiner provide either documentary evidence or an affidavit or declaration setting forth specific factual statements and explanation to support the finding, as required by 37 CFR 1.04(d)(2) in order for such a rejection to be maintained. In the absence of such evidentiary support, Applicants respectfully submit that the present rejection of claim 11 is improper and should be withdrawn pursuant to MPEP 2144.03 ("It is never appropriate to rely solely on common knowledge in the art without evidentiary support in the record as the principal evidence upon which a rejection was based.").

Applicants further submit that the present rejection of claim 11 is not only procedurally improper, but substantively deficient as well. Even if one were to accept the Examiner's unsupported assertion that "it is well known in the art that the global header is followed by frames wherein each frame has a frame header," there is no teaching or suggestion directed to the limitation of claim 11 wherein a traffic file is represented as a string which includes a global header followed by one or more frames each having an associated frame header.

Applicants respectfully note that the relied-upon portion of paragraph [0036] discloses an "interdeparture queue . . . which functions to store data representative of at least one selected traffic model, comprising both a pattern of data traffic and a traffic load." Even assuming that the interdeparture queue could be characterized as a traffic file located in a memory associated with the traffic generator and in which information characterizing one or more of the traffic flows is stored,

the arrangement recited in paragraph [0036] of Gerrevink is incompatible with the arrangement recited in claim 11.

Moreover, Applicants respectfully submit that, even if the Examiner could somehow establish that all aspects of the invention recited in claim 11 were individually known in the art, such arguments are insufficient to establish a *prima facie* case of obviousness. See, e.g., *KSR*, 127 S.Ct. at 1741, 82 USPQ2d at 1396 ("[A] patent composed of several elements is not proved obvious merely by demonstrating that each of its elements was, independently, known in the prior art.")

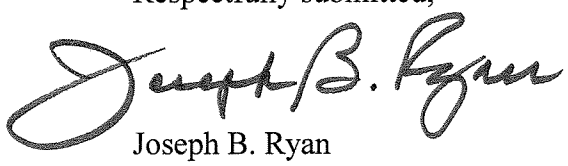
Specifically, the Examiner must provide an explicit "reason to combine the known elements in the fashion claimed by the patent at issue." *Id.* Here, the Examiner argues that the "motivation for implementing a global header followed by one or more frames each having an associated frame header is that it allows consistency in the system because every frame complies with the global header."

Applicants respectfully submit that, even if one accepts this contention, the Examiner has nonetheless failed to provide any explicit reason why one skilled in the art would have found it obvious to have represented a traffic file as a string which includes a global header followed by one or more frames each having an associated frame header, as recited in claim 11.

Rather, the proffered motivation appears to be a conclusory statement of the type ruled legally insufficient by the both Supreme Court and the Federal Circuit. See *KSR*, 127 S.Ct. at 1741, 82 USPQ2d at 1396, quoting *In re Kahn*, 441 F. 3d 977, 988 (Fed. Cir. 2006) ("[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.").

In view of the above, Applicants believe that claims 1-21 are in condition for allowance, and respectfully request withdrawal of the rejections and objection.

Respectfully submitted,



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